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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RQ CONSTRUCTION, INC.,
a California corporation,

Plaintiffs,

v.

ECOLITE CONCRETE U.S.A., INC.,
a Nevada corporation;
ECOLITE INTERNATIONAL, INC.,
a Nevada corporation;
BRIAN SMITH, an individual; and
DOES 1 through 90,

Defendants.

CASE NO: 09CV2728 BEN (WVG)

RQ CONSTRUCTION, INC.'S
MOTION IN LIMINE TO EXCLUDE
EVIDENCE AND ARGUMENT
RELATED TO RQ CONSTRUCTION,
INC.'S PRIOR BUSINESS
DEALINGS AND SHAREHOLDER
EMPLOYMENT ACTIVITIES

[NO. 7 OF 10]

Assigned to:

Hon. Roger T. Benitez, Courtroom 3
Hon. William V. Gallo, Courtroom F

Date: March 13, 2012

Time: 9:30 a.m.

Courtroom: 3

Complaint Filed: December 4, 2009

Trial Date: March 13, 2012

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I

INTRODUCTION

RQ Construction, Inc. ("RQC"), makes this motion in limine to exclude any evidence of or reference to prior business dealings and shareholder employment activities of RQC and/or its CEO, George Rogers. This motion is brought because defendants cross-examined Rogers in deposition (excerpts below) and may seek to present arguments to the jury based upon inferences defendants may claim are somehow relevant. As explained below, however, these earlier events are irrelevant to the present litigation, and have no bearing on whether Brian Smith misrepresented facts or committed violations of federal and state securities laws in connection with the sale of ECUSA securities and a manufacturing business to RQC. Reference to these events at trial will only result in a waste of time and judicial resources and add unnecessary confusion. Thus, RQC requests that the Court exercise its discretion to exclude any evidence or argument at trial related to RQC's prior business dealings and shareholder employment activities.

II

BACKGROUND

On several occasions during pretrial discovery, counsel for Brian Smith inquired about issues related to the formation of RQC, as well as transactions that took place between the original shareholders of RQC. These events pre-dated RQC's business dealings with Smith (the First Memorandum of Understanding ["1st MOU"] between RQC and defendant ECUSA was signed November 7, 2006) and have no bearing on the issues in this case.

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1 For example, during the deposition of RQC's CEO George Rogers,
2 counsel for Smith asked a series of questions related to Rogers' prior financing of
3 a company called Bachmann Construction, Inc., and the nature of that business.
4 Specifically, Rogers was questioned as follows:

5 Q: And how did you become involved with Bachmann
6 Construction Company?

7 A: Friend of mine, Craig Bachmann, wanted to start his own
8 construction company. And needed money, and I invested some
9 money with him.

10 Q: Did you receive stock or some ownership in Bachmann
11 Construction in exchange for that investment?

12 A: Yes, I did.

13 Q: What was the amount of the investment?

14 A: I don't recall.

15 Q: Was that a single investment or continuing stream of
16 investments over time?

17 A: It was a continuing contribution of predominant -- it was some
18 cash up front, and then I allowed them to utilize my office and some
19 secretarial work and provided some of the overhead for the
20 company.

21 (A true and correct copy of the relevant excerpts of Rogers' deposition testimony
22 ("Rogers Depo.") is attached as Exhibit 6 to the concurrently filed Declaration of
23 Louis J. Blum ("Blum Dec."). See lines 13:22-14:12; Blum Dec., ¶ 7.)

24 Later in the deposition, Rogers was asked about the winding down of
25 Bachmann Construction (RQC began on September 10, 1996). Eventually,
26 counsel for RQC objected to this line of questioning on the basis of relevance.
27 Specifically, Rogers was questioned as follows:

28 Q: You said you can't recall if you got any sort of stock or
ownership interest in Bachmann Construction?

A: I didn't say that.

Q: What --

1 A: I got stock.

2 Q: Do you still own that stock?

3 A: Company doesn't exist anymore.

4 Q: When did it wind down?

5 A: I don't recall the exact time. It wound down over the late
6 1990s. I don't remember when it was formally terminated.

7 Q: That's fair. Do you know the reason why it wound down?

8 A: Yes, I do.

9 Q: And what is that?

10 A: We chose to close it down, not do any more contracts in
11 Bachmann.

12 Q: Why was that?

13 A: I and Tom Quinn had started another company and chose to
14 do government contracting in that other company.

15 Q: So when you say the decision was made to close it down, who
16 made that decision?

17 MR. BLUM: Mr. Caine, can you give me some offer of the
18 relevance of this testimony? I'm giving you a lot of rope here, but
19 you're talking about other companies and other businesses, so....

20 (Rogers Depo., 16:1-17:2; Blum Dec., ¶ 7.)

21 Despite RQC's objection on the basis of relevance, counsel for Smith
22 continued to question Rogers related to the winding down of Bachmann,
23 litigation in conjunction with the winding down, and the subsequent formation of
24 RQC. The questioning continued as follows:

25 Q: Was there any litigation involved in the closing down of
26 Bachmann Construction?

27 MR. BLUM: Again relevance.

28 THE WITNESS: Not in the closing down of it. There was
litigation with Mr. Bachmann, which was -- which was -- went on
and we settled that.

/// / / /

1 BY MR. CAINE:

2 Q: Was that a lawsuit filed by you against him or him against
3 you?

4 A: It was him against -- against me and the others involved in the
5 RQ.

6 Q: Was that lawsuit filed in the state courts, as opposed to a
7 federal lawsuit?

8 A: I believe so, but I don't -- I don't recall.

9 (Rogers Depo., 19: 12-25; Blum Dec., ¶ 7.)

10 Finally, Rogers was asked a series of questions related to the membership
11 interests of the original shareholders of RQC, as well as various transactions that
12 transpired between the shareholders. Specifically, Rogers was questioned as
13 follows:

14 Q: When you and Mr. Quinn first started up RQ Construction,
15 what was your respective ownership interests?

16 A: I believe I was 51 percent and Quinn was 49 percent.

17 * * *

18 Q: Is Mr. Quinn still affiliated with RQ Construction?

19 A: No.

20 Q: When did he leave the company?

21 A: Three or four years ago.

22 Q: Was his interest bought out in some form?

23 A: It was.

24 Q: Was there any litigation filed as a result of Mr. Quinn leaving
25 the company?

26 A: No.

27 Q: No lawsuits?

28 A: No.

Q: Were any claims made by you or by him against you?

1 A: No.

2 Q: No claims of fraud or misdealings involving his exit from the
3 company?

4 A: No.

5 Q: Is Mr. Quinn still in Southern California, to your knowledge?

6 A: I do not know.

7 Q: Are you still in contact with him at all?

8 A: No.

9 Q: And Mr. Quinn has no ownership interest at all now in RQ
Construction?

10 A: No.

11 (Rogers Depo., 20:8-12, 21:25-22:25; Blum Dec., ¶ 7.)

12 Once again, the Bachmann matter and the departure of Quinn as an
13 employee (April 2006) and a director of RQC (July 2006) predated and have no
14 relevance whatsoever to RQC's business dealings with Brian Smith (1st MOU
15 dated November 7, 2006) and RQC's subsequent decision to invest in ECUSA
16 stock and a manufacturing business.

17 III

18 EVIDENCE RELATED TO RQC'S FORMATION, PRIOR
19 BUSINESS DEALINGS, AND PRIOR SHAREHOLDER
EMPLOYMENT ACTIVITIES IS IRRELEVANT AND WILL
20 RESULT IN A WASTE OF TIME AND CONFUSION OF THE ISSUES

21 Evidence is relevant only if it has a tendency to make the existence of any
22 fact that is of consequence to the determination of the action more or less
23 probable than it would be without the evidence. Fed R. Evid. 401. Evidence
24 which is not relevant is not admissible. Fed R. Evid. 402. Again, the key issues
25 in dispute in this trial are whether Smith made certain misrepresentations and
26 committed violations of federal and state securities laws in conjunction with
27 RQC's investment in ECUSA stock and a manufacturing business. Smith's

1 alleged violations and misrepresentations took place long after both the formation
2 of RQC (1996) and Quinn's departure from RQC (April 2006 as an employee
3 and July 2006 as a director) referenced in the deposition of Rogers above. In
4 addition, issues related to RQC's formation, prior business dealings, and
5 subsequent shareholder events had absolutely no impact or connection with
6 RQC's later dealings with Smith and RQC's decision to invest in ECUSA
7 securities. As such, this evidence has no tendency to make the existence of any
8 fact of consequence more or less probable than it would be without the evidence,
9 and it must therefore be excluded. Fed. R. Evid. 401, 402.

10 In addition, if Smith introduces this extraneous evidence, jurors may
11 improperly attach significance to these facts or form the impression that RQC's
12 shareholder employment activities and prior business dealings were somehow
13 related to RQC's decision to invest in ECUSA. Excluding evidence on RQC's
14 prior business dealings and shareholder employment activities will eliminate the
15 possibility of such confusion. Finally, the Court has only allotted eight days for
16 trial in this matter. If Smith is permitted to question witnesses concerning these
17 issues, RQC will be forced to cross-examine witnesses or obtain rebuttal
18 testimony to explain that these issues lack significance and did not influence
19 RQC's ultimate decision to invest in ECUSA. Such unnecessary examination of
20 witnesses on extraneous matters will waste precious time at trial and detract from
21 the material issues in dispute.

22 IV

23 CONCLUSION

24 The history of RQC's prior business dealings and original shareholder
25 employment activities are subjects wholly unrelated and unconnected to the
26 issues in this case. Smith must not be permitted to muddy the waters in this trial
27 by offering evidence on these irrelevant issues. Even if these issues have some
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1 peripheral relevance, they should be excluded because their minimal probative
2 value is substantially outweighed by the risk of unfair prejudice or confusing the
3 issues for the jury.

4 DATED: January 31, 2012

Respectfully submitted,

5 MARKS, FINCH,
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